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| 10/824,022      | 04/14/2004  | Philip Nathanael Jedele | 2448-000012         | 6013             |

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| EXAMINER |
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WILLIAMS, THOMAS J

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| ART UNIT | PAPER NUMBER |
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3683

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/824,022

Applicant(s)

JEDELE, PHILIP NATHANAEL

Examiner

Thomas J. Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 16-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/20/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Acknowledgment is made in the receipt of the oath filed April 14, 2004 and the information disclosure statement filed July 20, 2004.
2. Applicant's election of Invention I (claims 1-15) in the reply filed on April 8, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4-6, 9-13 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 4 line 2, it is unclear as to which of the plurality of walls that "said wall" is referencing.

Claims 5-6 are rejected due to their dependence upon claim 4.

6. Claim 9 line 1, it is unclear which of the plurality of apertures that "said at least one aperture" is referencing.

7. Claims 10 and 11 line 2, it is unclear as to which of the plurality of walls that "said wall" is referencing.

Claims 12, 13 and 15 are rejected due to their dependence upon claim 10.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 4- are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,485,897 to Kawaguchi et al.

Re-claim 1, Kawaguchi et al. disclose a brake caliper, comprising: a one piece body 38, the body has a first wall and an opposing second wall, a pair of bridge sides connect the first and second walls; the first wall has two bores 46 for receiving a piston assembly; an opening is formed between the first wall, second wall and pair of bridge sides, the opening enabling access into the body; at least one aperture formed in the second wall, the aperture is continuous with the opening for enabling access, the opening is capable of allowing access for tools for machining.

Re-claims 2 and 12, the bridge sides define a centroid aligned with centers of the at least two bores.

Re-claims 4-6, 10, 11 and 15, the second wall is provided with two apertures; a wall section separates the apertures for enabling receiving a paid pin; the apertures are U-shaped.

Re-claim 7, Kawaguchi et al. disclose a brake caliper, comprising: a one piece body 38, the body has a first wall and an opposing second wall, a pair of bridge sides connect the first and second walls; the first wall includes at least two bores each for receiving a piston assembly; an opening is formed between the first wall, second wall and pair of bridge sides, the opening enabling access into the body; a first and second brake pad 60, the first brake pad abuts the first

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wall and the second brake pad abuts the second wall; at least two pistons assemblies each are positioned in one of the at least two bores; a pair of apertures 58 are in the first wall for enabling coupling with a knuckle, see figure2.

Re-claim 9, the at least one aperture 58 originates at the bridge side.

Re-claim 14, the first brake pad abuts the piston assemblies so that the pad abutment is above a pad friction center, the abutment is above the pad friction center, see figures 2 and 3.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1-15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 and 20 of copending Application No. 10/395,925. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to have provided the brake caliper of '925 with two piston assemblies with corresponding opposing apertures, thus increasing the actuation force without increasing the diameter of the piston assemblies, or to have used two smaller pistons to achieve the actuation force of a single large piston.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Barbosa et al. teach a caliper with an opposing second wall having an aperture, de Gennes and Asaka each disclose a caliper with an opposing wall with two apertures.

Any inquiries concerning this communication or earlier communications from the examiner should be directed to Thomas Williams whose telephone number is 571-272-7128. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Bucci, can be reached at 571-272-7099. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-6584.

TJW

June 1, 2005

THOMAS WILLIAMS  
PATENT EXAMINER

Thomas Williams  
AU 3683  
6-1-05